



THE RIGHT TO A GOOD AND HEALTHY ENVIRONMENT: A Comparison of Laws and Legal Breakthroughs Through Citizen Lawsuits

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Abstract

This research aims to provide an explanation that every citizen has the constitutional guarantees to live and obtain a good and healthy environment to grow and develop as stipulated in Article 28 of the 1945 Constitution, the Charter of Human Rights, the Stockholm Declaration, and several constitutions of countries in the world. The juridical-normative method is the method used in this study where this research originates from primary, secondary, and non-legal materials and is analyzed descriptively and qualitatively. The results of the study show that there is a comparison of rights regarding the right to a healthy environment in various countries burdened by the state's obligation to maintain and increase the carrying capacity of the environment. The existence of a legal breakthrough Citizen Law Suit is an alternative for the rights of citizens to demand government responsibility for policies that harm citizens' rights through lawsuits in court.

Keywords:

Right to the Environment,
Citizen Law Suit

Abstrak

Penelitian ini bertujuan untuk memberikan penjelasan bahwa setiap warga negara memiliki jaminan konstitusional untuk hidup dan memperoleh lingkungan hidup yang baik dan sehat untuk tumbuh dan berkembang sebagaimana diatur dalam Pasal 28 UUD 1945, Piagam Hak Asasi Manusia, Deklarasi Stockholm, dan beberapa konstitusi negara-negara di dunia. Metode yuridis-normatif adalah metode yang digunakan dalam penelitian ini dimana penelitian ini berasal dari bahan primer, sekunder, dan non hukum dan dianalisis secara deskriptif dan kualitatif. Hasil kajian menunjukkan bahwa terdapat perbandingan hak mengenai hak atas lingkungan hidup yang sehat di berbagai negara yang dibebani oleh kewajiban negara untuk menjaga dan meningkatkan daya dukung lingkungan. Adanya terobosan hukum Gugatan Citizen Law merupakan alternatif hak warga negara untuk menuntut tanggung jawab pemerintah atas kebijakan yang merugikan hak warga negara melalui gugatan di pengadilan.

INTRODUCTION

The development of modern development has an impact on environmental (ecological) problems, in the last few decades, nature has become a real threat to the continuity of human life¹. Even though it is human greed for nature and the environment that is the most serious threat to the environment, compared to other organisms.² Human behavior that exploits nature without regard to environmental sustainability issues causes damage to environmental degradation and ecosystems.³

Prevention and control of pollution and environmental damage require cooperation and integration. The role of the government and the state is very important to overcome environmental damage for the sake of sustainability for future generations.⁴

Environmental law has developed rapidly, the function of law as protection, control, and certainty for society with the role of an agent of stability, also acts as an agent of development or agent of change.⁵ Environmental problems are getting bigger, more widespread, and more serious. It's like a rolling snowball, getting bigger and bigger. The problem is not only local or trans-local, but regional, national, transnational, and global. The impacts that occur on the environment are not only related to one or two aspects but are linked according to the nature of the environment which has multiple links in a chain of relationships that influence each other in a subsystem way. If one aspect of the environment is affected by a problem, then various other aspects will also experience an impact or result.⁶

The 1945 Constitution of the Republic of Indonesia (UUD), Article 1 clearly states that sovereignty is in the hands of the people. So it is the authority of the people to make efforts to save the environment in Indonesia. Article 28H paragraph (1) of the 1945 Constitution stipulates "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment and has the right to obtain health services", which is then spelled out in Law Number 32 of 2009 concerning Protection and Environmental Management (UUPPLH) Article 5 paragraph (1): "Everyone has the same

¹ Dietz T, Rosa EA, York R, "Environmentally efficient well-being: rethinking sustainability as the relationship between human well-being and environmental impacts". *Journal Human Ecology Review*. 2009; 16(1), hal. 114-123.

² Epstein G, Pittman J, Alexander SM, Berdej S, Dyck T, Kreitmair U, Raithwell KJ, Villamayor-Tomas S, Vogt J, Armitage D, 2015, *Institutional fit and the sustainability of social-ecological systems*. *Current Opinion in Environmental Sustainability*. 2015; 14, hal. 34-40

³ Absori, 2014, *Hukum Penyelesaian Sengketa Lingkungan, Model Penyelesaian Sengketa Lingkungan Dengan Pendekatan Partisipatif*, Muhammadiyah University Press, Surakarta, hal. 12.

⁴ Sigit Supto Nugroho, 2019, *Hukum Sumber Daya Alam Perspektif keadilan Inter-Antar Generasi*, Anugrah Karya Bersama, Surakarta, hal 4

⁵ Siti Sundari Rangkuti, 2008, *Dinamika Perkembangan Hukum Tata Negara dan Hukum Lingkungan*, Universitas Airlangga Press, Surabaya, hal 1-2

⁶ Absori , Sigit Supto Nugroho, Anik Tri Haryani, Sarjiyati Sarjiyati, Arief Budiono, Heru Santoso Wahito Nugroho, Ranga Jayanuarto, "The Prospect of Environmental Law to Achieve Healthy Environmental Development in Indonesia", *Medico Legal Update An International Journal*, Volume 20, Number 1 January-March 2020, hal. 195

right to a good and healthy environment". Environmental issues are basically everyone's problems (part of rights) and it is only natural that awareness movements that try to build to restore environmental conditions to a better direction are a must, by taking whatever role all parties can do to make improvements. against environmental damage.

RESEARCH METHODS

The research method used in this paper is a normative legal research method that places law as a building system of norms.⁷ The research originates from primary legal materials, secondary legal materials, and non-legal materials, with a conceptual approach and a statutory approach. As well as carried out a qualitative descriptive analysis.⁸

RESULTS AND DISCUSSION

A. Guarantee of the Right to a Good and Healthy Environment

The right to a good and healthy environment is regulated in Law Number 32 of 2009 concerning the Protection and Management of the Environment (UUPPLH). Article 65 paragraph (1) stipulates: "Every person has the right to a good and healthy environment as part of human rights".

Based on UUPPLH firmly states that the right to a good and healthy environment is part of human rights. Human rights are a set of rights that are inherent in the essence of human existence as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and everyone for the honor and protection of human dignity. Article 1 point 1 Law Number 39 of 1999 concerning Human Rights. As part of human rights, the basic principles of human rights apply to the right to a good and healthy environment, namely: The Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are naturally attached to and not inseparable from humans, which must be protected, respected, and upheld for the sake of increasing human dignity, welfare, happiness, intelligence, and justice (Article 2 of Law Number 39 of 1999 concerning Human Rights).⁹

The preamble "in the letter A", UUPPLH states that: "A good and healthy environment is a basic right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia." Article POINT 3 of UUPPLH states that environmental protection and management aims to: (1) protect the area from environmental pollution and/or damage; (2) guarantee human safety, health and life; (3) ensure the survival of living things and ecosystem sustainability; (4) maintaining the preservation of environmental functions; (5) achieve environmental harmony, harmony and balance; (6)

⁷ Sigit Sapto Nugroho, et'all, 2020, *Metodologi Riset Hukum*, Oase Pustaka, Surakarta, hal 29

⁸ Peter Mahmud Marzuki, 2017, *Penelitian Hukum*, Kencana, Jakarta, hal 96

⁹ Yustina Niken Saraningtyas, "Gugatan Warga Negara Dan Justiciability Dalam Pemenuhan Hak Atas Lingkungan Hidup Yang Baik Dan Sehat", *Jurnal Jurnal Ilmiah Fakultas Hukum Udayana Kertha Patrika*, Volume 38, Nomor 1, Januari-April 2016, hal 32

ensure the fulfillment of justice for present and future generations; (7) ensure the fulfillment and protection of the right to the environment as human rights; (8) controlling the use of natural resources wisely; (9) realizing sustainable development; and (10) anticipating global environmental issues.

If the provisions of the UUPPLH are examined, it can be seen that the legal policy is to protect and manage the environment so that humans can develop according to their dignity. Besides this, this law emphasizes that the right to obtain a good and healthy environment is a basic human right that must be upheld and obtain a place and protection from the state.¹⁰

Related to the right to a good and healthy environment, this can also be observed in the Law Number 40 of 2007 concerning Limited Liability Companies, where this law also regulates social and environmental responsibility. The provisions of Article 74 specifically emphasize that "Companies that carry out activities in the field and/or related to natural resources are obliged to carry out social and environmental responsibility". When viewed contextually, companies are also burdened with social and environmental responsibilities, namely companies whose goals and activities are to explore natural resources. The form of this social responsibility can vary, the main thing is to "rescue" natural resources which are increasingly disturbed by the balance. The government is beginning to perceive this as something urgent, bearing in mind that the impact is related to the livelihoods of many people.¹¹

The right to a quality environment is contained in Principle 1 of the Stockholm Declaration which states: *Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.*

The right to a good and healthy environment is also regulated in Article 1 of the Legal Principles for Environmental Protection and Sustainable Development which is the result of an agreement: ***"Experts Group on Environmental Law of the World Commission on Environmental and Development"*** and decide: ***"All human beings have the fundamental right to an environment adequate for their health and well-being"***.¹²

In the beginning, the 1945 Constitution did not recognize the right to a good and healthy environment. Only in the second amendment to the 1945 Constitution which was passed on August 18, 2000, the right to a good and healthy environment is regulated in Article 28H paragraph (1): "Every person has the right to live in physical and spiritual prosperity, to

¹⁰ I Gede Yusa dan Bagus Hermanto, 2018, *Implementasi Green Constitution di Indonesia, Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan*, Jurnal Konstitusi, Vol. 15 No. 2 Juni 2018, hal 306-326

¹¹ Reski Gustiandi, Absori, 2018, *Company's Responsibility on Corporate Social Responsibility (CSR): Legal Arrangements and Their Consequences in the Sectors of Economics and Environment in Indonesia*, International Conference on Indonesian Legal Studies (ICILS 2018), Atlantis Press, hal. 132-134

¹² John H. Knox, 2019, *The Global Pact for the Environment: At the crossroads of human rights and the environment*, Review of European, Comparative & International Environmental Law (RECIEL), Issue 28(1)2019, hal 9

have a place to live, and to have a good living environment and health and obtain health services.

The right to a good and healthy environment is also regulated in Article 28 of the Human Rights Charter as an integral part of the MPR RI Decree No.XVII/MPR/1998 concerning Human Rights which states: "Everyone has the right to a good and healthy environment". Article 9 paragraph (3) of Law Number 39 of 1999 concerning Human Rights stipulates: "Every person has the right to a good and healthy environment".

The definition of a good and healthy living environment implies an environment that can enable humans to develop optimally, in harmony, harmony and balance. The existence of this kind of guarantee provides the possibility for everyone to sue the government so that the goodness and health of their environment need to be considered and continuously improved and therefore it is also an obligation for the state to always create a good and healthy living environment for its citizens and continuously make efforts to environmental improvement and sanitation efforts.

The placement of the Right to a good and healthy environment has an important and essential meaning as a citizen's right, in this case, the State as the ruler must guarantee and protect citizens' rights to the environment. If studied more deeply, UUPPLH places the right to a good and healthy environment on the philosophy of the basis for the formation of changes to the new environmental law. Here the right to a good and healthy environment is placed in the highest position as a basic right of citizens guaranteed by the State.¹³

Thus, there is a direct link between aspects of human rights protection for the environment. The environment is an absolute part of human life. With this, it is necessary to have a high awareness for the community or the government authorities to maintain a good and healthy environment. Because this right is clearly guaranteed by the country's constitution.¹⁴

According to Einhard Steiger, what is called subjective rights is the broadest form of protection for a person.¹⁵ Individual rights are the most extensive form of protection because they provide a basis for legal action for individuals to realize their interests in a good and healthy environment. This right/claim can be implemented through the means of judicial procedures.¹⁶

Steiger also stated that the right/claim has two different functions, namely: 1). *The function of defense (Abwehrfunktion) is the right of the individual to defend himself against interference with his*

¹³ Rahmadi, Takdir, 2011, *Hukum Lingkungan di Indonesia*, Raja Grafindo Persada, Jakarta, hal 78

¹⁴ Muhammad Erwin. 2015. *Hukum Lingkungan Dalam Sistem Perlindungan Dan Pengelolaan Lingkungan Hidup Di Indonesia*, PT. Refika Aditama, Bandung, hal 67

¹⁵ Koesnadi Hardjasumantri, 2008, *Hukum Tata Lingkungan*, Edisi Ketujuh, Cetakan Ketujuhbelas, Gajah Mada University Press, Yogyakarta, hal 102

¹⁶ Siti Sundari Rangkuti, 2005, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*, Edisi Ketiga, Airlangga University Press, Surabaya, hal 280

*environment which is to his disadvantage; (2). The function of performance (Leistungsfunktion) is the right of the individual to demand the performance of an act in order to preserve, restore, or improve his environment.*¹⁷

The first function is as an individual's right to defend himself against disturbances that are detrimental to his environment. The second function is the individual's right to demand action to preserve, restore or improve the environment. Everyone's right to a good and healthy environment is a very substantive legal argument for someone to file a lawsuit against the fulfillment of these two individual rights functions through the court forum.¹⁸

Environmental lawsuits can be filed through lawsuits for unlawful acts in the form of environmental pollution and/or damage based on Article 87 paragraph (1) UUPPLH to obtain compensation and/or to take certain actions or by lawsuits in the state administrative court to cancel the issuance of environmental permits that do not that cause pollution and/or damage to the environment. The right to a good and healthy environment is accompanied by the obligation of everyone to maintain the preservation of environmental functions and control environmental pollution and/or damage.

B. The Right to a Good and Healthy Environment in Several Countries: A Comparison

In the United States, the right to a good and healthy environment is regulated in the National Environmental Protection Act of 1969 (NEPA 1969). The right to a good and healthy environment in the Netherlands is regulated in Article 21 (Environment) of the Dutch Constitution. In Russia, the right to a good and healthy environment is regulated in Article 2 of the Constitution of Russia. In Spain, the right to a good and healthy environment is regulated in Article 45 of the Spanish Constitution. The right to a good and healthy environment in Portugal is contained in the provisions of Article 66. In Japan, the right to a good and healthy environment in Japan is set forth in Article 3 of The Basic Environmental Law (Law no.91 of 1993) which took effect on 19 November 1993. In Thailand, it is regulated in Chapter III of the Thai Constitution, while in the Philippines it is regulated in Section 3 of the Philippine Environmental Policy.

In the United States, the right to a good and healthy environment is contained in the National Environmental Protection Act of 1969 (NEPA 1969) which came into effect on January 1, 1970. Based on Section 2 of the 1969 NEPA, the purpose of this law is "The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality".¹⁹

¹⁷ Ibid

¹⁸ Suparto Wijoyo, 2009, *Penyelesaian Sengketa Lingkungan (Environmental Disputes Resolution)*, Edisi Revisi, Airlangga University Press, Surabaya, hal 21

¹⁹ Douglas S. Cram, Nicholas K. Ashcroft, Samuel T. Smallidge, and Les P. Owen, 2017, *An Introduction to NEPA: The National Environmental Policy Act of 1969*, College of Agricultural, Consumer and Environmental Sciences, New Mexico State University (NMSU)

The right to a good and healthy environment is contained in the stipulating Section 101 (c) “*The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation of the environment*”. Based on Section 101 (c) NEPA 1969, in addition to every person having the right to enjoy a healthy environment, he is also obliged to protect the environment.

The right to a good and healthy environment is also contained in the constitutions of several states in the United States, for example, “***The Constitution of Illinois***”: “*each person has the right to a healthful environment*”; “***The Constitution of Rhode Island***”: “*the rights to use and enjoyment of the natural resources of the state with due regard for the preservation of their values*”; and “***The Constitution of Pennsylvania***”: “*the people have a right to clean air, pure water and to the preservation of the natural, scenic, historic, and aesthetic values of the environment*”.²⁰

The right to a good and healthy environment in the Netherlands is contained in Article 21 (Environment) of the Dutch Constitution which stipulates “It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment”. Based on Article 21 of the Dutch Constitution that those who have authority must maintain the country's territory so that it is suitable for habitation and protect and improve the quality of the environment.²¹

Based on *Article 2 (Protection of Human Rights) the Constitution of Russian* declared “*Humans, their rights and freedoms are the supreme value. It is a duty of the state recognize, respect and protect the rights and liberties of humans and citizens*”. The right to a good and healthy environment is contained in *Article 42 (Environment)*: “*Everyone has the right to a favorable environment, reliable information about its condition and compensation for the damage caused to his or her health or property by ecological violations*”.

Article 42 of the Constitution of Russia guarantees the right for everyone to enjoy a comfortable environment, obtain information about the environment and obtain compensation for damage to their health or property caused by an ecological disaster. This right is accompanied by the obligation to preserve the environment as stipulated in Article 58 (Duty to Protect the Environment) which states: “*Everyone is obliged to preserve nature and the environment, and care for natural wealth*”.²²

The Spanish Constitution guarantees the right for everyone to obtain the right to a good and healthy environment in the provisions of Article 45²³. Article 41 (1) mentioned: “*The public authorities shall concern themselves with the rational use of all natural resources for the purpose of*

²⁰ Council on Environmental Quality. 2013. NEPA and NHPA: A handbook for integrating NEPA and Section 106. Washington, D.C.: Author. Available at http://www.achp.gov/docs/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf

²¹ Daniel M. Bodansky, “Is There an International Environmental Constitution?”, *Indiana Journal of Global Legal Studies*, Volume 16, Issue 2, Summer 2009, hal. 565-584.

²² Jane Henderson, 2011, *The Constitution of the Russian Federation: A Contextual Analysis*, Hart Publishing, Portland USA

²³ W. Pedersen, “European Environmental Human Rights and Environmental Rights: A Long Time Coming?”, *George Town International Environmental Law Review*, Vol. 21, 2008: hal. 108-109;

protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity". Article 45(3) regulated "For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused".

The right to a good and healthy environment in the Portuguese constitution is regulated in Article 66.²⁴ Article 66 paragraph (1) determines "Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it". Article 2 regulated: *It is the duty of the State, acting through appropriate bodies and having resources to or taking support on popular initiatives, to:* a. Prevent and control pollution, its effects, and harmful forms of erosion; b. Order and promote regional planning aimed at achieving a proper location of activities, a balanced social and economic development, and resulting in biologically balanced landscapes; c. Create and develop natural reserves and park and recreation areas and classify and protect landscapes and sites so as to ensure the conservation of nature and the preservation of cultural assets of historical or artistic interest; d. Promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability".

The right to a healthy environment in France is regulated by the French National Assembly adopting the Charter for the Environment in 2004 and integrated this Charter into the French Constitution (The Constitution of the French Fifth Republic).²⁵ The adoption of this Environmental Charter is clearly seen in the Preamble to the French Constitution, which states: "The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to rights and duties as defined in the Charter for the Environment of 2004."²⁶

The Preamble to the French 2004 Environment Charter recognized that natural resources and their balance are prerequisites for human existence. The Charter also recognizes that human existence cannot be separated from the environment, that the environment is the heritage of mankind, that humans are exerting an increasing influence on the conditions of life and their evolution, that biological diversity, free human development, and the advancement of human society influenced by certain patterns of consumption or protection and by the over-exploitation of natural resources, that the preservation of the environment must be achieved in the same way as the fulfillment of the fundamental interests of the French people; and that in order to realize sustainable development, choices made to meet the needs of the present generation must not reduce the ability of future generations to meet their needs.

The Environmental Charter is further elaborated in 10 Articles which contain various rights and obligations related to environmental management. This charter states that everyone

²⁴ Ibid..... Lihat juga dalam <https://dre.pt/constitution-of-the-portuguese-republic>., Diakses Tanggal 5 Juni 2023

²⁵ D. Marrani, "Human Rights and Environmental Protection: The Pressure of the Charter for the Environment on the French Administrative Courts", *Sustainable Development Law and Policy* Vol. 10, 2009: hal. 52.

²⁶ B.W. Cramer, "The Human Right to Information, the Environment and Information about the Environment: From the Universal Declaration to the Aarhus Convention", *Communication Law and Policy*, Vol. 14, 2009: hal. 89

has the right to a healthy and balanced environment (Article 1), the right to environmental information, and the right to be involved in decision-making (Article 7). The Environmental Charter also imposes an obligation on everyone to participate in efforts to maintain and improve the environment (Article 2), and an obligation to avoid disturbance to the environment or, if avoidance is not possible, to limit the consequences of such disturbance (Article 3). In addition, those who cause environmental damage bear the obligation to contribute to repairing the damage (Article 4).

The Environmental Charter also requires policymakers to apply the precautionary principle (Article 5),⁴ and to support sustainable development by combining environmental protection and utilization, economic development, and societal progress (Article 6). The Environmental Charter also states that education and training related to the environment will contribute to the implementation of the rights and obligations contained in the Environmental Charter (Article 8), and that research and innovation will help maintain and utilize the environment (Article 9). Finally, it is also stated that the Environmental Charter will serve as a reference for French policymaking at the European and international levels (Article 10).²⁷ The adoption of the Environmental Charter as part of the French Constitution is considered a step forward in environmental management. With this Charter, France is included in the group of countries that include environmental protection in their constitution.²⁸

The right to a good and healthy environment in Japan is set forth in Article 3 of The Basic Environmental Law (Law No.91 of 1993) which took effect on November 19, 1993 *“Environmental conservation shall be conducted appropriately to ensure that the present and future generations of human beings can enjoy the blessings of healthy and productive environment and that the environment as the foundation of human survival can be preserved into the future, in consideration that preserving the healthy and productive environment is indispensable for healthy and cultured living for people, and that the environment is maintained by a delicate balance of the ecosystem and form the foundation of human survival, which is finite in its carrying capacity and presently at risk of being damaged by the environmental load by human activities”*.²⁹

The right to a good and healthy environment in Thailand is regulated in Chapter III of the Thai Constitution concerning the rights and freedoms of the Thai people, Section 56 states *“The right of a person to give to the State and communities participation in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his or her health and sanitary condition, welfare or quality of life, shall be protected, as provided by law”*. Any project or activity which may seriously affect the quality of the environment shall not be permitted unless its impacts on the quality of the environment have been studied and evaluated and the opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project

²⁷ J.R. May, “Constituting Fundamental Environmental Rights Worldwide”, *Pace Environmental Law Review*, Vol. 23, 2005-2006: hal. 113;

²⁸ Ibid

²⁹Yumiko Nakanishi, 2016, *Contemporary Issues in Environmental Law The EU and Japan*, Environmental Protection in the European Union, Springer Japan, hal 5

or activity, as provided by law. The right of a person to sue a State agency, State enterprise, local government organization or other State authority to perform the duties as provided by law under paragraph one and paragraph two shall be protected.³⁰

Meanwhile, the regulation of the right to a good and healthy environment in the Philippines has been contained in *Section 3 of the Philippine Environmental Policy* declared: "In furtherance of these goals and policies, the government recognizes the right of the people to a healthful environment. It shall be the duty and responsibility of each individual to contribute to the preservation and enhancement of the Philippine environment".³¹

C. Citizens Lawsuits for a Healthy Environment: A Legal Breakthrough

As part of human rights, the Indonesian people have the right to a good and healthy environment as stipulated in Article 28 H paragraph (1) of the 1945 Constitution which states: Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good living environment and healthy and entitled to health services. Humans and the environment are a unit that influences each other as stated in Article 1 UUPPLH states: "An environment is a spatial unit with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and well-being of humans and other living things".

Law Number 39 of 1999 concerning Human Rights (HAM) states: everyone has the right to a good and healthy environment". More specifically, in the Human Rights Law, all protection is borne by the government, as contained in Article 8 which states "Protection, promotion, enforcement, and fulfillment of human rights is primarily the responsibility of the Government".

For this reason, the community has the right to sue the government or known as the "Citizen Law Suit". The steps taken by citizens serve as an alternative method to demand the fulfillment of the government's responsibility for a good and healthy environment if the government has neglected to account for this obligation. The right to a good and healthy environment is part of the economic, social, and cultural rights (ECOSOB). The state has an obligation to seek planned, concrete, and comprehensive steps to fulfill the economic, social, and cultural rights (ECOSOB) of its citizens.

Several references state that civil lawsuits have long been developed only in countries that adhere to the Common Law system. The main characteristic that distinguishes between the Common Law and Civil Law systems is that in the Common Law system, jurisprudence is used as the main source of law, adhering to the doctrine of *stare decisis*,³² and the adversary

³⁰ Narong Kiattikunwong, "The Green Bench: Can an environmental court protect natural resources in Thailand?", *Environment, development and sustainability* 21, 385–404 (2019). <https://doi.org/10.1007/s10668-017-0044-4>

³¹ Klemensits, P. "Economic Development or Environmental Protection? The Dilemmas of the Developing Countries through the Case of the Philippines". *European Journal of Sustainable Development*, Volume 8, Nomor 1, (2019). <https://doi.org/10.14207/ejsd.2019.v8n1p281>

³² The *Stare decisis* is a precedent or a legal principle according to the Common Law tradition, in which case a court facing a particular problem will apply or follow a previous court's decision which contains the same legal issue as that court.

system³³ in the judicial process. Unlike the case in the Civil Law legal system which recognizes codification, laws are the main source of law, and the judicial system is inquisitorial in nature.³⁴

Based on the Common Law system, the principle of Citizen Law Suit is the same as the principle of Actio Popularis, for example in lawsuits against environmental protection by citizens, regardless of whether these citizens directly experience the pollution or not. Because the issue of environmental protection is in the public interest or the interests of the wider community, every citizen has the right to demand it. In simple terms, Actio Popularis is a lawsuit filing procedure that involves the public interest on a representative basis. Lawsuits can be filed with the reference that every citizen, without exception, has the right to defend the public interest.

In essence, the Citizen Law Suit is a mechanism for citizens to sue the responsibilities of state administrators, in this case, the government, for negligence in fulfilling citizens' rights. This negligence can be argued as an act against the law so that the Citizen Law Suit is filed within the scope of civil cases that are included in the realm of general justice. If proven negligent, the State is punished to issue a policy that is general regulation (*regelling*) so that such negligence does not occur again in the future.

The procedure for filing an application for a Citizen Law Suit has not specifically been regulated in Indonesian laws and regulations. The existing arrangements are regarding Class Action lawsuits³⁵ and legal standing. For the first time, the procedure for applying for a Citizen Law Suit was accepted by the Central Jakarta District Court and has permanent legal force in a civil case Number: 28/Pdt.G/2003/PN.JKT.PST, which was decided on December 8, 2003.³⁶ The panel of judges, in this case, made a legal breakthrough. When issuing a stipulation on the preliminary examination, the panel of judges approved the Citizen Law Suit mechanism, even though the legal basis still raises pros and cons.

Philosophically, every citizen has the right to defend the public interest or the public interest. In addition, today's society's lawsuits are increasingly placing the courts as a beacon of hope for seeking justice and legal breakthroughs. In the opinion of Satjipto Rahardjo, there is rule-breaking in his progressive legal movement. The citizen lawsuit model lawsuit sues the state authority (government) for an action that harms the public interest or demands that the

³³ The adversary system is a system that generally applies in countries that adhere to Common Law. This system places the judge as an impartial arbiter and keeps the parties and their attorneys acting according to court procedures. Then the judge decides the case based on the evidence presented by the parties and the applicable law.

³⁴ Inquisitorial means that in that system, judges have a major role in directing and deciding cases. Judges are active in finding facts and careful in assessing evidence.

³⁵ Class Action is a procedure for filing a lawsuit, in which one or more people representing a group file a lawsuit for themselves and at the same time representing a large number of groups of people, who have the same facts or legal basis between the group representatives and the intended group members.

³⁶ This case relates to the deportation of 480 thousand citizens of the Republic of Indonesia by the Malaysian Government who became migrant workers in Malaysia. Research by NGOs shows that workers have been treated inhumanely since the time they were sent to being expelled from Malaysia and shows the severity of legal protection (from the Government) of Indonesia.

government take active action for the public interest. Regarding the fulfillment of citizens' human rights, Article 28 I paragraph (4) of the 1945 Constitution of the Republic of Indonesia and Article 71 of the Human Rights Law clearly state that the protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government. In addition, Article 7 paragraph (1) of the Human Rights Law provides for the right of every person to make all legal efforts for the occurrence of human rights violations.

Thus, even though there is no regulation, the legal basis or institutionalization of citizen lawsuits or citizen lawsuits can be accepted to be submitted to the court mechanism, more specifically in cases of demands for the fulfillment of human rights owned by each citizen. This is solely an alternative means that can be used as a form of legal protection for citizens from acts of omission by state authorities.

The right to a good and healthy environment, as with other economic, social and cultural rights, can be proven theoretically as a justiciable right, that is, its fulfilment can be demanded through the courts. The issue of protecting and upholding the right to a good and healthy environment has legal qualities to be brought before the judiciary (domestic, regional or international) for examination and decision. For example, the civil lawsuit in case number 55/PDT.G/2013/PN.SMDA which was filed on June 25 2013 by Samarinda residents was decided by the Panel of Judges at the Samarinda District Court. The panel of judges in this case decided that the defendants (in this case c.q the mayor of Samarinda, cq. Minister of Energy and Mineral Resources (ESDM), cq. Governor of East Kalimantan Province, cq. Minister of Environment of the Republic of Indonesia, cq. DPRD Level II the City of Samarinda) was declared negligent in carrying out its obligations to create a good and healthy environment, which resulted in a loss of public interest for citizens, especially for residents of Samarinda City, and reformulated the general policy regarding coal mining which included evaluating all mining permits that had been issued, supervising actors efforts to realize reclamation and post-mining, improve environmental functions, make strategic efforts to protect community agricultural and fishery areas from pollution caused by mining activities.

This precedent is an alternative method as a legal effort by citizens to sue the government and corporations in order to improve environmental governance so that environmental damage and pollution that harms the public interest does not recur. State administrators have the mandate and responsibility to protect, promote, uphold, and fulfill human rights. In this case, there are state responsibilities as ordered by the constitution to be carried out. The right to a good and healthy environment is a basic right, in which the state has an interest in ensuring the realization of the constitutional mandate to protect all Indonesian citizens.

CONCLUSION

The right to a good and healthy environment is a basic right regulated in the constitution and several laws and regulations. This right globally is also regulated in the Stockholm Declaration as well as in several constitutions of countries in the world that

provide equal rights to their citizens to obtain the right to a good and healthy environment. Efforts to defend this right can be guaranteed by the Constitution so that every citizen can file a lawsuit in court if the state does not fulfill this right.

One of the legal breakthroughs on the right to a good and healthy environment can be carried out through citizen lawsuits (citizen lawsuits). Fulfillment of human rights in the environmental field. In the development of state life, there are not a few indications of negligence or neglect by government authorities that can harm citizens, including the interests of future generations.

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